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BEFORE THE ARIZONA CORPORATION COMMISSION

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ARIZONA CORPORATION COMMISSION
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Arizona Corporation Commission
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NOV 20 2009

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2 **MIKE GLEASON**
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5 **Commissioner**
6 **JEFF HATCH-MILLER**
7 **Commissioner**
8 **KRISTIN MAYES**
9 **Commissioner**
10 **GARY PIERCE**
11 **Commissioner**

12 **IN THE MATTER OF THE FORMAL**
13 **COMPLAINT OF QWEST CORPORATION**
14 **AGAINST ARIZONA DIALTONE, INC. TO**
15 **ENFORCE ITS INTERCONNECTION**
16 **AGREEMENT**

DOCKET NOS. T-03608A-07-0694
T-01051B-07-0694

ARIZONA DIALTONE, INC.'S
RESPONSE TO QWEST
CORPORATION'S STATUS REPORT
AND BRIEF IN SUPPORT OF ITS
REQUEST FOR A PROCEDURAL
CONFERENCE

17 Respondent, Arizona Dialtone, Inc. ("AZDT"), hereby files this Response to the Status
18 Report and Brief in Support of Request for Procedural Conference filed by Qwest Corporation
19 ("Qwest") pursuant to the Procedural Order issued by the Arizona Corporation Commission (the
20 "Commission") on October 27, 2009.

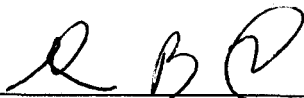
21 In its Status Report, Qwest indicates that it wishes to have the Commission hold a
22 procedural conference "to address how the back billing dispute between Qwest and Arizona
23 Dialtone will proceed before the Commission" now that the Bankruptcy Court for the District of
24 Arizona has dismissed AZDT's Adversary Complaint.¹ In response to the Commission's question
25

26 ¹ AZDT's Adversary Complaint sought an adjudication of AZDT's claim for a refund of certain charges paid by AZDT to Qwest for previously provided switching services. The Bankruptcy Court dismissed the

1 why the automatic stay provisions of 11 U.S.C. § 362 would not prevent the Commission from
2 holding a procedural conference, Qwest's sole argument is that the Bankruptcy Court's dismissal
3 of AZDT's Adversary Complaint implicitly terminated the automatic stay. (Status Report, pp.3-
4 4). The reason Qwest is making this "implicit termination" argument is that Qwest has not yet
5 filed a motion for stay relief expressly asking the Bankruptcy Court to lift the automatic stay to
6 allow the Commission to hold further proceedings in this docket. However, Qwest indicates in its
7 Status Report that "[o]ut of an abundance of caution and to avoid Arizona Dialtone arguing that
8 Qwest has violated the automatic stay, Qwest will file a Motion for Stay Relief in the Bankruptcy
9 Court," and that "[a]s soon as the stay is granted Qwest will inform the Commission so that a
10 procedural schedule may be established." (Status Report, p.4, lns.16-19). In light of these
11 commitments by Qwest, AZDT will not respond substantively at this time to Qwest's "implicit
12 termination" argument, and instead, will make the appropriate arguments in responding to Qwest's
13 Motion for Stay Relief to be filed in the Bankruptcy Court. Unless and until the Bankruptcy
14 Court grants Qwest's motion for stay relief, AZDT's position is that the automatic stay remains in
15 place and that this Commission has no authority to hold a procedural conference or to conduct any
16 proceedings in this docket.

17 **RESPECTFULLY SUBMITTED** this 19th day of November, 2009.

18 **CHEIFETZ IANNITELLI MARCOLINI, P.C.**

19
20 By 
21 Claudio E. Iannitelli, Esq.
22 Glenn B. Hotchkiss, Esq.
23 Matthew A. Klopp, Esq.
24 Attorneys for Arizona Dialtone, Inc.

25
26 Adversary Complaint without prejudice in deference to the Commission's primary jurisdiction to decide the
backbilling issues between the parties. AZDT has not re-filed the refund claim with the Commission.

1 ORIGINAL and 13 copies of the foregoing
2 hand-delivered this 20 day of November, 2009, to:

3 Docket Control
4 ARIZONA CORPORATION COMMISSION
5 1200 West Washington Street
6 Phoenix, AZ 85007

7 COPY of the foregoing hand-delivered
8 this 20 day of November 2009 to:

9 Sarah Harpring, Administrative Law Judge
10 Hearing Division
11 ARIZONA CORPORATION COMMISSION
12 1200 West Washington
13 Phoenix, Arizona 85007

14 Armando Fimbres
15 Utilities Division
16 ARIZONA CORPORATION COMMISSION
17 1200 West Washington Street
18 Phoenix, Arizona 85007

19 COPY of the foregoing mailed
20 this 20 day of November, 2009, to:

21 Norman G. Curtright, Esq.
22 Qwest Corporation
23 20 East Thomas Road, 16th Floor
24 Phoenix, AZ 85012

25 Maureen A. Scott, Esq.
26 Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington
Phoenix, AZ 85007

By: 

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